

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: EXCHANGE OF TRANSIT TRAFFIC	DOCKET NOS. SPU-00-7 TF-00-275 (DRU-00-2)
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ORDER DENYING OBJECTION TO INVOICE

(Issued August 15, 2002)

On June 11, 2002, the Rural Iowa Independent Telephone Association (RIITA) filed a letter with the Utilities Board (Board) objecting to the Board's March 13, 2002, invoice to RIITA following the final order in this docket. RIITA filed its objection pursuant to Iowa Code § 476.10 (2001 Supp.). RIITA asserts that as an intervenor in the proceeding it should not be assessed a portion of the costs of the proceeding because it intervened in good faith and did not expand the scope of the proceeding.

RIITA also asserts that Qwest Corporation (Qwest), as the original filing party, should bear the responsibility for any direct costs of the proceedings. In addition, RIITA states that the recent amendment to Iowa Code § 476.10, which allows for direct assessments against parties to Board proceedings that are not public utilities, should not be applied retroactively to include RIITA in the cost assessment.

Iowa Code § 476.10 provides that "[u]pon receipt of an objection, the board shall set the matter for hearing and issue its order in accordance with its findings in the proceeding." Accordingly, on June 28, 2002, the Board issued an order setting

this matter for hearing on August 13, 2002, and further providing that any party wishing to participate in this matter to a greater extent than cross-examination of other parties' witnesses should file a prehearing brief and a witness list on or before July 30, 2002.

No prehearing briefs or witness lists were filed and on August 7, 2002, the Board issued an order canceling the hearing and stating it would consider RIITA's objection to be submitted on the basis of its objection letter.

The Board will deny the objection. The assessments in this case were not made pursuant to the Board's general assessment authority in Iowa Code § 476.10; they were made pursuant to the specific assessment authority of Iowa Code § 476.101(10), which provides:

10. **In** a proceeding associated with the granting of a certificate under section 476.29, approving maps and tariffs for competitive local exchange providers provided for in this section, or in resolving a complaint filed pursuant to subsection 8 and **proceedings under 47 U.S.C. § 251-254, the board shall allocate the costs and expenses of the proceedings to persons who are engaged in or who seek to engage in providing telecommunications services or other persons identified as participants in the proceeding.** The funds received for the costs and the expenses shall be remitted to the treasurer of the state for deposit in the general fund of the state as provided in section 476.10.

(Emphasis added.) This docket was a proceeding under 47 U.S.C. §§ 251-254 because it required that the Board interpret and apply § 251 and certain FCC regulations and orders adopted pursuant to those statutes. See, for example, the discussion in the Board's "Proposed Decision and Order" issued November 26, 2001,

at pages 7 and 11 through 14, and Conclusions of Law Nos. 2, 3, 4, and 7, and in the "Order Affirming Proposed Decision And Order" issued March 18, 2002, at pages 5, 6, and 11 through 14.

Even the pleading that initiated this matter, the "Petition For Declaratory Order" filed on May 19, 2000, by U S WEST Communications, Inc., (originally assigned Docket No. DRU-00-2) made several references to 47 U.S.C. § 251, the Board's interconnection rules adopted to fulfill its delegated duties under that statute, and the need to interpret and apply that statute and those rules in this case. See "Petition For Declaratory Order" at pages 3, n. 2; 7; and 9-10.

Each of RIITA's objections is mooted by the fact that this assessment was issued pursuant to § 476.101(10). Section 476.10 would allow the Board to decide not to charge expenses to good faith interveners, as requested by RIITA, but § 476.101(10) requires that the Board allocate the costs and expenses among the persons identified as participants. The same requirement applies to RIITA's objection that Qwest initiated this action and chose the forum. Finally, RIITA's objection concerning possible retroactive application of the amendments to § 476.10 does not apply to § 476.101(10), which became effective prior to initiation of this action, see Acts 1999 (78 G.A.) ch. 20, § 4, effective April 14, 1999.

IT IS THEREFORE ORDERED:

The "Objection To Invoice" filed on June 11, 2002, by the Rural Iowa
Independent Telephone Association is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 15th day of August, 2002.